

Message

From: Hanson, Robyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C4CD36EF688F47ABA2373A33B5D9B8FF-HANSON, ROB]
Sent: 2/5/2021 5:17:21 PM
To: Cathy Laughner [cathyl@bkbh.com]
CC: 'Thomas Jodoin' [TJODOIN@helenamt.gov]
Subject: RE: City of Helena and 40 CFR 403.8(f)(1)

Cathy,

We are aware of that provision of the City of Helena's code; however, we are not aware of the City's legal basis for asserting (in its code) that it has authority to regulate industrial users located beyond the jurisdiction of the City. AI has discussed this particular concern with the City during past pretreatment audits and has not been provided any additional authority. Thus, it is our position that an IGA or other legally binding agreement with IUs located outside of the City is necessary for the City to maintain adequate legal authority to implement and enforce the pretreatment program.

If you can point us to a provision in state law or a specific enabling statute that authorizes the City to assert—in its code—jurisdiction over dischargers located outside the City, to include all legal authorities required by the pretreatment regulations, that would be helpful. Put another way, what authority would the City use to defend against a potential challenge to the code's facial assertion of extraterritorial powers?

-Robyn

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From: Cathy Laughner <cathyl@bkbh.com>
Sent: Monday, February 1, 2021 11:40 AM
To: Hanson, Robyn <Hanson.Robyn@epa.gov>
Cc: 'Thomas Jodoin' <TJODOIN@helenamt.gov>
Subject: City of Helena and 40 CFR 403.8(f)(1)

Robyn,

I have been looking at the City's code and have determined that Helena already has the authority required by 40 CFR 403.8(f)(1) because POTW users are subject to the City's rules. No one other than AI has said the City does not have authority to manage its wastewater system outside city limits. Perhaps when AI determined that an "intergovernmental agreement" was required (Section 4.3.2 of the September 2017 audit) he did not know about the following:

6-4-3: APPLICATION OF CHAPTER:

The provisions of this chapter apply to all users of the city POTW, including those located outside the city. (Ord. 3124, 6-21-2010) https://codelibrary.amlegal.com/codes/helenamt/latest/helena_mt/0-0-0-2857

Cathy